



# Property Tax Newsletter

## News and developments

*A publication of the Property Tax Division*

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Tax Commissioner

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### 2005 Legislature Begins Soon


Beginning in January, the capitol will be buzzing with legislators, lobbyists, government officials, employees, and other interested persons - all concerned with legislation that will or will not meet their needs.

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It is important to participate in the legislative process. One can do that by following the bills pertaining to property taxation. The North Dakota Legislative Council is the central office for the legislative session and is a source of information. The Office of State Tax Commissioner tracks legislation pertaining to all tax types and the newspapers publish information regarding hearing schedules. Organizations such as the North Dakota Association of Counties, North Dakota League of Cities, North Dakota Township Officers Association and the North Dakota Association of Assessing Officers follow issues pertaining to their interests.

For property tax issues that you and your governing board consider worthy of new legislation, please contact your local representatives or personnel in the Property Tax Division. As concerned citizens, it is important to voice your opinions to your area legislators and those who are on the Finance and Taxation Committee or other legislative committees. As governmental officials, it is important to provide information that affects the application of the proposed legislation. Anyone can testify at the committee hearings. It is important to provide accurate information and make positive suggestions to the committees.

Information regarding bill status and legislative hearings for the 2005 Legislature is available on the Web site for the ND Legislative Council. Go to [www.state.nd.us/lr](http://www.state.nd.us/lr). Individuals who have concerns regarding proposed property tax legislation may also contact the Property Tax Division of the Office of State Tax Commissioner. 

### Ethics and the Sales Ratio Study

The Sales Ratio Study is conducted to measure the quality, accuracy, and uniformity of property tax assessments. Its purpose is to help local and county assessment officials equalize assessments in their jurisdictions. It is the basis for the Tax Commissioner's recommendations to the State Board of Equalization. Changes made based on sales ratio statistics affect property taxes that will be paid by all classes of taxpayers. When the sales ratio statistics indicate that properties are over- or under-assessed, assessment officials have the responsibility to make changes to the assessments so that they represent true and full value and are equalized among similar properties.


It is important that the Sales Ratio Study be conducted with integrity, and that any assessment adjustments result from examination of accurate, reliable information.



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The following points are important for you to remember as you submit sales and appraisals for the Sales Ratio Study:


1. Impartial appraisals. It is frequently necessary to submit appraisals for inclusion in the Sales Ratio Study, due to the lack of a sufficient number of property sales in a jurisdiction. Ideally, those appraisals should be done by an impartial, outside appraiser – not by the assessor in whose jurisdiction the subject properties are located. However, financial considerations usually make hiring a different appraiser an unaffordable luxury.
2. Ethical choices. The following are real scenarios of some unethical actions that have been tried.
  - a. The assessor appraised a property at the same value that was already listed as true and full value; there was no additional work involved and the ratio was obviously 100 percent.
  - b. The ratio in the jurisdiction indicated a need for an increase or decrease to be within the 5 percent tolerance. That was easy to fix; the assessor made an appraisal or appraisals that moved the problem ratio in the desired direction.
  - c. The assessor miscalculated and found the appraisals submitted didn't work the way he/she thought they would. The assessor tried to convince the State to remove those appraisals from the study and replace them with others that made the assessor look better.
3. Valid results. Sometimes legitimate, useable sales produce really bad ratios. Either you can accept the results or you can try to challenge those sales. Challenges should be for legitimate reasons only, and you must provide those reasons and supporting evidence when you submit your challenges. Don't try to be creative.

Instead of working so hard to arrive at the "right" ratios, why not use the sales ratio statistics as they're intended? Use sales of residential and commercial property to measure whether assessments represent current market value and to provide direction for determining fair and equitable assessments in your jurisdictions. Owners of property that is assessed above or below established market value pay either too much or too little property tax. That is not equitable taxation. 

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## **Electronic Filing of Sales Ratio Study – Try it!**

More and more county and city assessment officials are sending the information for the Assessment Sales Ratio Study to the Office of State Tax Commissioner electronically. No wonder! It takes less time for assessment personnel to complete their work because information is entered only once, and Bx forms are completed only for those sales that are not usable. Judy Brosz, who works on the Assessment Sales Ratio Study, has received many positive comments regarding the electronic process.

Assessment officials interested in filing their sales information electronically can contact Judy Brosz at 701-328-3142 or e-mail her at [jbrosz@state.nd.us](mailto:jbrosz@state.nd.us). She will explain the process and e-mail a template, in Excel, to use for entering usable sales. If you wish to contact any of the tax directors or city assessors who currently submit their sales electronically, send Judy an e-mail to request a list of the participating counties and cities. 

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## **Interim Taxation Committee Met in September**

The Interim Taxation Committee of the North Dakota Legislature met September 22 in Bismarck. The two basic property tax issues discussed pertained to the farm residence exemption and the issues involved, and possible consequences when owners of highly valued property file applications for abatement for a prior year.

Marcy Dickerson, State Supervisor of Assessments, testified that if a company such as American Crystal Sugar is successful in getting reduced valuations, affected political subdivisions will have no way to make up the lost property tax revenue for a prior year (e.g. 2003). There would be no revenue loss for subsequent tax years because a political subdivision is entitled to levy the same number of dollars levied in the highest levy year of the past three years, regardless of changes in taxable value of property in the district. North Dakota political subdivisions that have large industrial plants located within their boundaries may, in the future, need to deal with tax appeals and the consequences of lost revenue as owners of those large facilities hire law firms to challenge assessments.

County Directors of Tax Equalization Robert Wood (Grand Forks County), Larry Osborn (Richland County), Don Siebert (Ward County), Leon Samuel (Morton County) and Gwen Tatum (Dickey County) did a wonderful job of presenting information pertaining to issues of application for the farm residence exemption. Marcy Dickerson presented information supplied by a few other tax directors. They presented actual situations pertaining to issues with the current law. Some basic issues and concerns included the following:

- Farmers incorporate the farm and receive wages from the corporation; residence eligible for exemption as farm structure occupied by a farm laborer
- Farmers living in moderate residences and working off the farm are assessed while some residences worth hundreds of thousands of dollars are exempt
- Assessment officials have difficulty obtaining and determining appropriate farm income
- Some assessors and township boards don't want to administer the exemption
- Difficulty determining who is a retired farmer
- Difficulty determining the majority of time spent in farming activities
- Not all assessment officials require annual application for the exemption
- Incorrectly completed applications

Three bill drafts were presented to the committee; however, no action was taken regarding them. A summary of each bill draft follows:

1. Limit the exemption to the first \$75,000 of the true and full value of the structure value.
2. Limit the exemption to qualified farmers with household income from the most recent taxable year of \$40,000 or less and require annual application for the exemption.
3. Requires applicant to provide assessor with an affidavit stating entitlement to the exemption and signed authorization to allow the Tax Commissioner to examine the income tax returns and disclose to the assessor whether or not the claimant's income qualifies for the exemption.

A Richland County farmer, township assessors from Barnes, Nelson, and Richland Counties, and representatives of the Township Officers Association, and North Dakota Farm Bureau provided comments regarding their views on the exemption.


A complete copy of the minutes of that meeting is available on the North Dakota Legislative Council's Web site at [www.state.nd.us/lr](http://www.state.nd.us/lr). 

***"Three bill drafts were presented to the committee; however, no action was taken regarding them."***

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## Information Regarding Contaminated Properties

During the 2004 Conference of the North Dakota Association of Assessing Officers (NDAAO), an excellent seminar was presented pertaining to assessment of contaminated properties. The NDAAO library has a book titled "Issues Confronting Properties Affected by Contamination or Environmental Problems." One of the tax directors is dealing with assessment concerns regarding contaminated properties such as a former air base, a salt water treatment plant, and inert and regular landfills. The tax director read the book and found it very interesting and well presented.


Speaking of landfills, the International Association of Assessing Officers published a booklet titled “Sanitary Landfill Valuation: The ‘Royalty’ Method.” If anyone wants to borrow these publications, contact the Property Tax Division. 

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## Education and Public Relations Tool

Public officials are public servants. Communication between assessment officials and taxpayers helps build trust and respect. Assessment officials can educate and provide good customer service by informing the public about the assessment process and issues relating to it.

One way to educate the public is by speaking at meetings of organizations – whether nonprofit or special interest groups. Tax directors who implement reappraisal programs or agricultural land valuation by use of the detailed soils survey find that property owners become more open to change when they are informed of what is going on and have the opportunity for input. It opens up communication between assessment officials and the taxpayers.

Another way to educate the public is to publish articles in local newspapers. Assessment officials may develop articles pertinent to what the issue is at the time. Informing the public about programs such as homestead credit is a good way to help people and “wear a white hat.” Assessment officials may publish in their local newspapers articles from the Property Tax Newsletter. Be sure the information in the articles you publish is current. 

***“Communication between assessment officials and taxpayers helps build trust and respect between government officials and the public.”***


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## Exempt or Taxable?

North Dakota Century Code § 57-02-03 states “[A]ll property in this state is subject to taxation unless expressly exempted by law.” For real property, assessment officials should consider all property taxable unless the property owner provides a specific statute and evidence to support the claim for exemption. In incorporated cities, property owners, excluding governmental entities, are required to file an application for exemption yearly with the assessor. N.D.C.C. § 57-02-14.1. Before the assessor will consider any property as exempt from taxation, the owner must provide evidence that the property or the property owner qualifies for exemption.

Most property tax exemptions require qualification based on ownership and use. Some businesses typically thought to be owned by nonprofit organizations, such as clinics, hospitals and ambulance services, may actually be organized for profit. The assessor needs to investigate. If an owner applies for exemption by filing an application for property tax exemption, the applicant is required to provide a copy of the organizational documents such as the articles of incorporation and by-laws for the first time or upon request. Conditions can change.

Some businesses have a name which includes the name of a governmental entity, such as Dakota County Transition Center or Washington City Transit Service. If the county or city does not levy a tax for its support, it is not a governmental entity. Assessors should check with the county auditor and the manager in charge of the property.

Don’t assume properties qualify for exemption as being owned by the government or by nonprofit organizations. Build a rapport with property managers, use the application for property exemption and request property owners to provide the necessary evidence to support their claims. 

## Internet Access is Not Telecommunications

We sometimes receive questions about taxation of real property used in providing Internet access service. Real property used in providing Internet access service is subject to local assessment just like any other commercial property. Following is a brief history of how this was decided.

The 1997 North Dakota Legislature reenacted N.D.C.C. ch. 57-34, Telecommunications Carriers Taxation, and expanded it to cover all two-way telecommunications service offered by investor-owned telecommunications companies that were previously centrally assessed under N.D.C.C. ch. 57-06; cooperative, mutual, and small commercial telephone companies that were previously subject to a gross receipts tax under N.D.C.C. ch. 57-34; and resellers of telecommunications service. The 1997 law included the following definition:

### N.D.C.C. § 57-34-01

6. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
  - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
  - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
  - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
  - d. Telegraph service.

The new gross receipts tax was effective for tax year 1998. On September 3, 1998, the State Board of Equalization approved assessing the telecommunications gross receipts tax against Internet service providers by a 3 to 2 vote. Many Internet service providers were assessed for 1998 and challenged their assessments. The 1999 Legislature amended the language to make it clear that Internet access service was taxable under the telecommunications gross receipts tax. The bill was later vetoed.

Federal legislation that created a moratorium on Internet taxation grandfathered in taxes in states, including North Dakota, that already had taxes on Internet access in place. In North Dakota, sales tax and telecommunications gross receipts tax were included.

On July 1, 1999, the State Board of Equalization, again by a 3 to 2 vote, determined that Internet service providers were not considered telecommunications carriers under N.D.C.C. ch. 57-34.

The 2003 Legislature amended subsection 6 as follows:

- d. Mobile telecommunications service that is deemed to be provided by the customer's home service provider under chapter 57-34.1, regardless of where the mobile telecommunications service originates, terminates, or passes through; and
- e. Telegraph service.


The legislation did not address the issue of Internet access.

Internet access is not being taxed under the telecommunications gross receipts tax, so real property used to provide Internet access is subject to ad valorem taxation at the local level.

Property, including land, that is used in two-way telecommunications service for consideration is exempt from ad valorem taxation under the in-lieu provisions of N.D.C.C. ch. 57-34. There is no ownership test, only a use test. For example, telecommunications towers that are owned by someone other than a telecommunications carrier are exempt if they are used by a telecommunications carrier for two-way service. Property used for one-way service such as paging is not exempt.

***"Real property used in providing Internet access service is subject to local assessment just like any other commercial property."***



We suggest you ask by whom and for what purpose any telecommunications property in your jurisdiction is used. If real property is used partly for one-way telecommunications, or if part of the property is used by a government agency (which is not subject to taxation), that portion is subject to local assessment. 

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## Buildings Can Have Negative Values

Most assessors have assessed a property or two for which the value of the land, if vacant, would be higher than the value of the land and building combined. This happens when a building contributes no value to the property and should be removed to allow the land to be used for its highest and best use.

For example, an old dilapidated residence is located on a parcel of land next to a medical campus. If the site would be vacant, the highest and best use of the parcel would probably be used for construction of a medical building. As a site for a medical building, the land has value of \$45,000. It will cost \$4,000 to demolish the old residence. A potential buyer will pay \$42,000 for the property in its present condition. How should the assessor list this property for assessment purposes?

North Dakota Century Code § 57-02-34 requires the assessor to determine separate values for the land and buildings and enter those values in separate columns opposite the description of the property, and in another column show the total value of the property by adding the totals of the two previous columns. The market value (true & full value) of the property is \$42,000 with the existing building. The land, if vacant, has a value of \$45,000. The building has a negative value because of the cost to remove it. The assessment book would show the following:


Land value:     \$45,000

Bldg. value:    \$-3,000

Total value:    \$42,000

The method of assigning a negative value to the building has two benefits:

- Total value of the property is properly reflected, and
- Value of the land is at its true and full value whether the building is present or not.

The assessor or computer guru would need to change the computerized assessment program to allow for negative building values. 

### Electronic Newsletter

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